IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3374 of 2005

Between:

1 Syed Ismail, S/o. Late M. Syed Mohiddin,
R/o. Opp: District Collector Complex, Near Colelctorate, Kurnool, Kurnool District.
2 G. Khaleel Ahmed, S/o. Late G. Bashamia,
R/o. Opp: District Collector Complex, Near Colelctorate, Kurnool, Kurnool District.
3 S. Prasad, s/o. S. Yellappa,
R/o. Opp: District Collector Complex, Near Colelctorate, Kurnool, Kurnool District.

..... PETITIONERS

AND

1 The District Collector, Kurnool District at Kurnool.
2 The Kurnool Municipal Corporation, Kurnool, Kurnool District, represented by its Commissioner.
3 The Mandal Revenue Officer, Kallur Mandal, Kurnool district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one n the nature of Writ of Mandamus declaring the impugned action of the respondents in issuing impugned proceedings of Notice dated 5-2-2005 for evicting the petitioners from their dwelling huts and pretty business shops situated in Sy.No. 869/b2 (erst while Kallur Gram Panchayat) now Kurnool Municipal Corporation which is highly illegal, arbitrary and violative of Art. 14 and 21 of the Constitution of India without jurisdiction and also contrary to the provisions of Corporation Act and Consequently set aside the same by directing the respondents to consider the proposals submitted by the Kurnool Corporation vide its Resolution No.98, dated 19-4-1999 preceded by the proposals submitted by the 3rd respondent in Rc.No. B/890/96, dated 28-12-96 by granting of

pattas in favour of the Petitioners.

Counsel for the Petitioner: MR.G.V.SHIVAJI

Counsel for the Respondents: GP FOR REVENUE

This Court at the stage of admission made the following :

O R D E R:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for the respondents.

The petitioners claim to be in occupation of small extents of land in survey No.869/B2 of Kallur Gram Panchayat and Mandal, Kurnool District, wherein they have raised wooden bunks and thatched huts and are residing therein. It is also stated that the Gram Panchayat has been collecting the tax from them. While so, the petitioners were served with the impugned notice dated 05-02-2005 calling upon them to vacate the said land. The said notice was issued under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as 'the Act') and the same is under challenge in this writ petition.

The learned counsel for the petitioners stated that before issuing the said notice the petitioners were not afforded any opportunity by issuing a show cause notice calling upon them to explain as to why they should not be removed from the land in question. He further stated that the petitioners made a representation long back requesting the respondents to regularise their occupation in the land in question and the same is pending and therefore the impugned order is unwarranted and unjustified.

At the outset, it is to be noted that against the order passed under Section 6 of the Act, an efficacious remedy of appeal is available under Section 10 (1) of the Act. Without exhausting said alternative remedy the petitioners cannot maintain this writ petition.

However, in the facts and circumstances of the case and particularly in view of the fact that they have been in possession of the property in question for the last two decades and that the representation made by them for regularization of their occupation is pending consideration, while permitting the petitioners to prefer the Statutory Appeal, it would be appropriate to protect their possession till the disposal of the Appeal.

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting leave and liberty to the petitioners to work out the remedy of appeal. It is made clear that in case the petitioners file any such appeal within a period of two weeks from today, the same shall be considered and appropriate orders be passed, in accordance with law, as expeditiously as possibly, preferably within a period of eight weeks thereafter. Till such disposal of the appeal, the respondents are directed not to implement the impugned order dated 05-02-2005. No costs.

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(**G. ROHINI, J**)

Date: 24-02-2005

ghn

To

1 The District Collector, Kurnool District at Kurnool.
2 The Kurnool Municipal Corporation, Kurnool, Kurnool District, represented by its

Commissioner.
3 The Mandal Revenue Officer, Kallur Mandal, Kurnool district.

4 Two CCs to the Government Pleader for Revenue, High Court of A.P., Hyderabad. (O.U.T.)

5 Two CD copies.

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.3374 OF 2005

OPERATIVE PORTION (BY WIRE):

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting leave and liberty to the petitioners to work out the remedy of appeal. It is made clear that in case the petitioners file any such appeal within a period of two weeks from today, the same shall be considered and appropriate orders be passed, in accordance with law, as expeditiously as possibly, preferably within a period of eight weeks thereafter. Till such disposal of the appeal, the respondents are directed not to implement the impugned order dated 05-02-2005. No costs.

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(**G. ROHINI, J**)

Date: 24-02-2005

Note:

Issue wire at party’s costs.

Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

ghn